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NOTES OF CASES.

Insurance—Forfeiture—Sufficiency of Notice of Premium Due.—In *McDonald v. Aetna Ins. Co.* (New York Supreme Court), 169 N. Y. Supp. 762, it is held that a notice that insurance premium would be due on a certain date, and that insured had 31 days of grace, and that, if not paid, the policy and premiums would be forfeited, was insufficient, in not stating clearly that the policy would be forfeited, if premium was not paid on or before a certain date, because the law requires that such notices should be plain and clear.

On the face of the notice it was stated that the premium was due on a certain date, and on the reverse side of the card there was printed the following:

“Thirty-one days’ grace are allowed in the payment of premiums, but interest at 6% is charged for the time deferred, and practically it is better to pay promptly when due.

“Unless such payment shall be made to said company or its duly authorized agent in accordance with the above notice, the contract and all payments thereon will become forfeited and void, except as to any right that may have accrued to an extension, a surrender value or paid-up policy, as in the contract provided.”

In passing upon the sufficiency of the notice to meet the statutory requirement the court says: “Assuming that the printed matter on the back of the card should be held to constitute a part of the notice, such notice is in my opinion fatally defective, because of its failure to inform the assured of the date on which the payment must be made in order to avoid a forfeiture. The notice on the front of the card stated that the payment ‘will become due on the 2d day of April, 1916. On the reverse of the card, after the provision respecting 31 days’ grace and the advice that ‘practically it is better to pay promptly when due,’ it is said: ‘Unless such payment shall be made to said company or its duly authorized agent in accordance with the above notice’ the contract will be forfeited, etc.

“In *Flint v. Provident Life & Trust Co.*, 215 N. Y. 254, 109 N. E. 248, the notice was ‘that the premium noted below will be due * * * on 12 Mo. 30, 1911, * * * and that, if not paid’ the policy will become forfeited. It was held that the notice was defective, because it failed to state that the policy would become forfeited if the payment of the premium was not made ‘by or before the day it falls due.’ The court said: ‘It does tell when the premium is due; it also says that, if the premium is not paid, the policy and all payments thereon will become forfeited and void; but it does not declare that these consequences will ensue if the premium be not then paid, or be not paid “by or before” that day.’

“This notice is equally defective, unless it is saved by the requirement or notice on the back of the card that there would be forfei-

ture unless payment was made 'in accordance with the above notice.' It is contended by the appellant that this is a substantial notification that there would be forfeiture unless the payment was made on or before the 2d day of April, 1916, which was the due date. This, however, is negatived by the fact that under the terms of the policy it could not be forfeited for the failure to pay on the due date, but could only be forfeited for failure to pay within 31 days thereafter, together with interest on the overdue payment at 6 per cent. It is further negatived by the advice that 'practically it is better to pay promptly when due.' Taking the notice as a whole, it is quite possible and reasonable to infer that the notification was that the policy would be forfeited unless payment was made within 31 days after the due date; but in any event the law does not permit forfeiture upon notices that are not plain and clear and that do not substantially comply with the statute. Within the reasoning and authority of the Flint Case, this notice is fatally defective. Neither is the decision of the Supreme Court of the United States in *Nederland Life Insurance Co. v. Meinert*, 199 U. S. 171, 26 Sup. Ct. 15, 50 L. Ed. 139, 4 Ann. Cas. 480, to the contrary, for the notice in that case not only specified the date when the premium would fall due, but contained the statutory notice that unless it was paid 'by or before that date' the policy would be forfeited. Similarly in *McCormack v. Security Mutual Life Insurance Co.*, 220 N. Y. 447, 116 N. E. 74, the notice specified the due date and that 'unless said premium shall be paid on or before said date' the policy would be forfeited.

"There is also a serious question whether the printed matter on the back of the card can be fairly said to constitute a part of the notice. No reference is made to the back of the card by anything on the front of the card. The matter on the back of the card is not in the form of a notice and it is not signed by the company or any one in its behalf. The only matter that purports to be a notice, signed by the company or its agent, is on the front of the card, and this notice is complete in itself, and on account of its completeness might naturally lead one to consider that it constituted the whole notice. In such case, the recipient of the notice would not necessarily examine further to see whether there was some matter printed on the back of the card, or even read carefully what was on the back of the card, assuming that he chanced to observe the matter printed there. There is no reason why the company, if it relied upon the matter printed on the back of the card, should not at least have directed attention thereto by some appropriate words on the front of the card. The Court of Appeals, in the Flint Case, commented upon the reluctance of the insurance companies to comply with the provisions of the statute in giving these notices, and stated that their course was 'difficult to understand.' However, it is unnecessary to determine this question, because the notice was otherwise defective."